



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00028/2019

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 21 October 2019

Decision & Reasons Promulgated
On 25 October 2019

Before

UPPER TRIBUNAL JUDGE FINCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-and-

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(ANOYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr. D. Clarke, Home Office Presenting Officer

For the Respondent: Mr. P. Nathan of counsel, instructed by J. McCarthy Solicitors

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Respondent applied for asylum on 1 October 2007, stating that he was a national of Sudan and a member of the Zaghawa tribe and the Justice

and Equality Movement. His application was refused but his subsequent appeal was allowed and he was granted refugee status on 26 March 2010.

2. It is the Appellant's case that the Respondent is a national of Chad and that this is confirmed by the fact that he applied for visit visas for the United States of America in the name of Hassan Aboulaya Yaya in May, June and September 2005 and 23 August 2007.
3. The Respondent arrived back in the United Kingdom on 17 June 2013 and his travel document disclosed that he had visited Chad as well as France. The Appellant cancelled the Respondent's refugee status on 15 January 2019. The Respondent and his wife were also refused indefinite leave to remain in the United Kingdom on 5 March 2019 but he was granted limited leave to remain for 30 months on human rights grounds.
4. The Respondent appealed against the decision to revoke his refugee status and First-tier Tribunal Judge Randall allowed his appeal in a decision promulgated on 12 July 2019. The Appellant appealed against this decision and on 7 August 2019 First-tier Tribunal Judge Ford refused permission to appeal. However, on 5 September 2019 Upper Tribunal Judge Hanson granted the Appellant permission to appeal. The Respondent filed a Rule 24 Response on 8 October 2019.

ERROR OF LAW HEARING

5. Both the Home Office Presenting Officer and counsel for the Respondent made oral submissions and I have taken these into account when reaching my findings below.

ERROR OF LAW DECISION

6. The Immigration Rules relating to revocation of refugee status state:

"338A a person's grant of refugee status under paragraph 334 shall be revoked or not renewed if any of paragraphs 39A to 339AB apply..."

...

339AB This paragraph applies where the Secretary of State is satisfied that the person's misrepresentation or omission of facts, including the use of false documents, were decisive for the grant of refugee status".

7. The Respondent accepted that he did use a false identity in order to attempt to obtain a visa to the United States in 2005 and 2007, as a national of Chad, and he did not deny that his fingerprints matched those disclosed by the US Department of Homeland Security in 2008.
8. This led to him being interviewed under caution at Huddersfield Police Station on 28 August 2008 by an Immigration Officer, after he had been arrested for attempting to obtain leave by deception. He immediately confirmed that he had used another name when applying for visas to the United States.
9. In the first ground of appeal, the Appellant submitted that at paragraph 16 of his decision First-tier Tribunal Judge Randall gave inadequate reasons for placing weight upon the evidence given by Mr. Philip Cox at the earlier hearing before Immigration Judge Wynne. She relied on the fact that the Judge had noted that Immigration Judge Wynne had "allowed the [Respondent's] appeal based on his relationship with his brother, a JEM commander, relying entirely on the oral and written evidence of a journalist, Mr. Cox".
10. The Home Office Presenting Officer submitted that First-tier Tribunal Judge Randall should not have given weight to Mr. Cox's evidence as at the hearing before Immigration Judge Wynne the Secretary of State did not dispute that the Respondent was a national of Sudan and Mr. Cox was not cross-examined about the Respondent's nationality.
11. In paragraph 5.2 of his decision, First-tier Tribunal Judge Randall summarised the letter of support provided by Mr. Cox, dated 8 February 2008. This was that whilst reporting in Chad and Dafur in March and April

2007, he met a JEM commander and that he then subsequently met this commander's brother, the Respondent, in London. First-tier Tribunal Judge Randall also had had the benefit of reading Immigration Judge Wynne's determination. In paragraphs 62 to 74 of this determination he recorded the evidence given by Mr. Cox in chief and when cross-examined and re-examined. It was clear that Mr. Cox had met the Respondent by chance at a Darfur meeting in London in January 2008 and had realised during their subsequent conversation that he was the brother of a JEM Commander, who he had previously met with when reporting in Dafur and Chad. The clear implication to be drawn from Mr. Cox's evidence was that he believed that the Respondent was the brother of a Sudanese JEM commander and that he had met the Respondent at a meeting at Darfur in London.

12. It is my view that this evidence is sustainable, whether or not the Appellant subsequently doubted the Respondent's nationality, as the evidence related to Mr. Cox's belief that the Respondent was related as claimed. The fact that he met the Respondent at a meeting on Darfur and that this was a chance meeting also added weight to both the fact that the Respondent was Sudanese and that he had not manipulated a meeting with Mr. Cox.
13. First-tier Tribunal Judge Randall also noted that Mr. Cox's evidence was not challenged by Ms Afazli, the Home Office Presenting Officer appearing before him. The Judge did not prepare a separate record of proceedings but appeared to have incorporated it into his decision. This decision was very detailed and First-tier Tribunal Judge Randall summarised the submissions made on behalf of the Secretary of State by Ms Afzali at paragraph 11 of his decision and there was no suggestion that she had challenged the evidence given by Mr. Cox.
14. It is correct to state in the Appellant's decision letter, she did assert that the Respondent was a national of Chad and First-tier Tribunal Judge Randall noted this in paragraph 11.2 of his decision. However, for the

reasons given above, it was not unlawful for him to give some weight to the evidence previously given by Mr. Cox before Immigration Judge Wynne, as no further evidence had been provided in relation to the evidence given by Mr. Cox which was capable of undermining that evidence and which did not relate to the Respondent's nationality but to his relationship to his brother. In addition, it is clear from paragraphs 7 to 7.8 of First-tier Tribunal Judge Randall's decision that Ms Afzali did not cross-examine the Respondent about his meeting with Mr. Cox or challenge the basis on which Mr. Cox concluded that the Respondent was related to his brother, as claimed.

15. In addition, at paragraph 16 of his decision First-tier Tribunal Judge Randall correctly directed himself about the weight which could be given to Immigration Judge Wynne's findings, stating "although, under Devaseelan principles the findings of Immigration Judge Wynne are my starting point, there have clearly been significant developments in the 11 years since then. Furthermore, it is common ground that not all the material before me, even material in existence in 2008, was before the Immigration Judge Wynne".
16. Furthermore, as by the time of the hearing before him the Respondent's identity and nationality were in issue, First-tier Tribunal Judge gave careful consideration to the totality of the evidence submitted by the Respondent in relation to this issue. He referred to letters of support from Ismail Karar Babo, Adam Musa and the Sudanese Community Association West Yorkshire. He also referred to the oral evidence given by Adam Musa, Amal Akasha and Mr. Khamis. The Home Office Presenting Officer sought to discredit this evidence but in paragraph 20 First-tier Tribunal Judge Randall gave detailed and cogent reasons for giving weight to the evidence and for concluding that the Respondent was a Sudanese national.
17. In the second ground of appeal it was submitted that First-tier Tribunal Judge Randall's finding in paragraph 20 of his decision was wholly unreasoned in so far as he took into account the fact that the Respondent

had stated that “the US authorities didn’t consider him Chadian, which is why he claims they refused his visa application”.

18. However, in my view, these two sentences have to be read in the context of the totality of the content of paragraph 20, which is a review by First-tier Tribunal Judge Randall of the evidence which may confirm that the Appellant is Sudanese. The Respondent has not challenged the other findings of fact made by First-tier Tribunal Judge Randall in that paragraph.
19. I also note that First-tier Tribunal Judge Randall also found in paragraph 21 of his decision: “Although the Appellant is not a truthful witness, I am satisfied on the balance of probabilities, having heard the evidence of the three witnesses, and bearing in mind the evidence of Mr Cox which was accepted in its entirety by IJ Wynne and never challenged subsequently, and having considered the documentary evidence from Sudan, and the country material, that the Appellant is a Sudanese national and the brother of a JEM commander”. This makes it clear that ultimately the Judge did not give weight to what the Appellant said about the US authorities’ reason for refusing him visas and did not need to do so in the light of the significant amount of other evidence about the Appellant’s nationality.
20. In her third ground of appeal the Appellant submitted that First-tier Tribunal Judge Randall’s findings were predicated on a mistake of fact. Counsel for the Respondent had submitted, as noted in paragraph 12.2 of the Judge’s decision that the Appellant’s fraud was “fully investigated between the interview in 2008 and the grant of refugee status in 2010”. The Judge also noted in paragraph 12.4 that counsel had submitted that “the facts that formed the basis of the allegation that the Appellant was in fact from Chad emerged in his interview in 2008, from the material discovered earlier by the [Secretary of State] and the US, and was clearly in the mind of the [Secretary of State] by 2010”.
21. First-tier Tribunal Judge Randall had then found at paragraph 22 of his decision that “In any event, and most importantly for the determination of

this appeal, the material about the Appellant's application in Chad was clearly known to the Respondent before the Appellant was recognised as a refugee in 2010 and must have been part of the evidence considered prior to the decision".

22. The Appellant now seeks to rely on the fact that the Respondent and those then representing him, Lawrence Lupin Solicitors, were sent a request for a further interview to ascertain A's identity on 14 April 2010, one week after he was granted asylum. However, this was not evidence which was before the Judge and, therefore, it cannot be said that it was an error of law for him not to take it into account.
23. In any event, it now appears from the disclosure given by the Appellant that this interview was subsequently cancelled on 21 April 2014 and no further action has been taken since then to make any further enquiries about the Respondent's identity. As this interview was cancelled, the fact that the Respondent did not disclose the initial invitation to be interviewed is also not capable of casting any doubt on his credibility.
24. For the reasons given above I find that there were no material errors of law in First-tier Tribunal Judge Randall's decision.

DECISION

- (1) The Appellant's appeal is dismissed.
- (2) First-tier Tribunal Judge Randall's decision is maintained.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 22 October 2019